

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6758 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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DAHYABHAI BECHARBHAI PATEL

Versus

STATE OF GUJARAT & ANR.

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Appearance:

Shri A.J. Patel, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/04/96

ORAL JUDGEMENT

The order passed by the Mamlatdar and  
Agricultural Lands Tribunal at Gandhinagar (the first  
authority for convenience) on 10th July 1968 in Case No.  
210/32P/Pethapur as affirmed in appeal by the order  
passed by and on behalf of the State Government

(respondent No.1 herein) on 4th January 1988 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, the first authority disposed of one parcel of land bearing survey No. 1348 admeasuring 1 acre 26 gunthas situated at Pethapur in Gandhinagar district (the disputed land for convenience) in favour of the heirs of one Maganji Nathuji Dabhi, the original owner of the disputed land.

2. The facts giving rise to this petition move in a narrow compass. The disputed land belonged to the deceased predecessor-in-title of respondent No. 2 herein. The petitioner claims that her deceased father was its tenant. He would have become entitled to its statutory purchase under the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for convenience). However, both the landlord and the tenant entered into a sale transaction and the owner sold the disputed land to the father of the present petitioner by execution of the registered sale deed on 12th June 1963. Its copy is at Annexure B to this petition. It appears that the proceeding under sec. 32G of the Tenancy Act was undertaken in the name of the deceased father of the petitioner. He appears not to have remained present in the said proceeding and the statutory sale of the disputed land in his favour therefore became ineffective. Thereupon the first authority took up the necessary proceeding under sec. 32P of the Tenancy Act. It came to be registered as Case No. 210/32P/Pethapur. By his order passed on 10th July 1968 in the aforesaid proceeding, the first authority terminated the tenancy rights of the father of the petitioner and awarded the disputed land in favour of the heirs of the deceased owner and directed possession to be awarded to them after the standing crop was reaped. Its copy is at Annexure C to this petition. It appears that the present petitioner came to know of the order at Annexure B to this petition some time in 1981. He therefore carried it in appeal under sec. 32P(9) of the Tenancy Act before respondent No. 1. It appears that respondent No. 2 therein filed one statement showing that possession of the disputed land pursuant to the order at Annexure C to this petition was not awarded to them and its possession continued to remain with the present petitioner. A copy of the aforesaid statement is at Annexure D to this petition. After hearing the parties, by the order passed by and on behalf of respondent No.1 herein on 4th January 1988 in the aforesaid appellate proceeding, the appeal came to be dismissed. Its copy is at Annexure E to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the

Constitution of India for questioning the correctness of the order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure E to this petition.

3. Several contentions have been raised in support of this petition. This petition can however be disposed of on a short ground of contravention of the audi alteram partem rule on the part of the first authority. The grievance voiced by and on behalf of the petitioner is that the order at Annexure C to this petition was passed without giving an opportunity of hearing to the petitioner or the deceased. This point was canvassed in appeal before respondent No. 1. That point was however not considered by or on behalf of respondent No. 1 in the impugned order at Annexure E to this petition. It may be mentioned that the contention regarding absence of notice of the proceedings under sec. 32P of the Tenancy Act and absence of an opportunity of hearing was in fact taken before respondent No. 1 and that contention has been mentioned in the impugned order at Annexure E to this petition. It thus becomes clear that such contention is not taken up for the first time before this Court.

4. Ordinarily, in this fact-situation, the matter ought to be remanded to respondent No. 1 after setting aside the impugned order at Annexure E to this petition on the ground of non-application of mind on the part of its author as to the aforesaid contention. That would however not serve any useful purpose. Whether or not any notice of the proceeding under sec. 32P of the Tenancy Act and any opportunity of hearing to the deceased father of the petitioner or to the petitioner himself were given would certainly be within the knowledge of the heirs of the deceased owner who are impleaded as respondent No. 2 herein. In their statement at Annexure D to this petition no such averment has been made. On the contrary, the sale transaction represented by the deed at Annexure B to this petition has been accepted. Even before this Court no affidavit-in-reply has been filed by or on behalf of respondent No. 2 to controvert the contention regarding absence of notice of the proceeding under sec. 32P of the Tenancy Act and grant of an opportunity of hearing before passing the final order at Annexure C to this petition. In that view of the matter, there is no hesitation in coming to the conclusion that the impugned order at Annexure C to this petition was passed in contravention of the audi alteram partem rule.

5. In view of my aforesaid discussion, I am of the

opinion that the impugned order at Annexure C to this petition as affirmed in appeal by the appellate order at Annexure E to this petition cannot be sustained in law. It has to be quashed and set aside. The matter deserves to be remanded to the first authority for restoration of the proceeding to file and for his fresh decision according to law after giving an opportunity of hearing to the concerned parties.

6. It transpires from the appellate order at Annexure E to this petition that the proceedings under sec. 84C of the Tenancy Act were initiated by the first authority and the order passed therein was subjected to challenge in appeal by one Punjabhai Amtabhai. He is found to have carried the matter in revision before the Gujarat Revenue Tribunal against the order in appeal. The proceedings before the Tribunal have come to be stayed pending the decision in appeal by the order at Annexure E to this petition. The petitioner in this case has also obtained interim relief against enforcement and implementation of the orders at Annexures C and E to this petition. In that view of the matter, it would be necessary for the first authority to hear Punjabhai Amtabhai before passing any final order in the proceeding ordered to be restored by this judgment. If Punjabhai Amtabhai has initiated any proceeding under the Tenancy Act within the first authority's jurisdiction, that proceeding also may be heard along with the proceeding ordered to be restored by this judgment of mine.

7. In the result, this petition is accepted. The order passed by the Mamlatdar and Agricultural Lands Tribunal at Gandhinagar (the first authority) on 10th July 1968 at Annexure C to this petition as affirmed in appeal by the order passed by and on behalf of the State Government on 4th January 1988 at Annexure E to this petition is quashed and set aside. The matter is remanded to the first authority for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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